

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH  
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY SECOND DAY OF DECEMBER  
TWO THOUSAND AND FOUR

PRESENT

**THE HON'BLE MR JUSTICE K.C. BHANU**

**WRIT PETITION NO : 13343 of 2004**

Between:

G. Durga Prasad, S/o Veerabrahmachary  
S.V. School for Deaf Bheemavaram, West Godavari District

**..... PETITIONER**

AND

- 1 The Tirumala Tirupathi Devasthanams rep by Executive Officer, Tirupathi,  
Chittoor District
- 2 D. Nirmala Kumari Working as Telugu Pandit Gr. I  
(On Deputation) at S.V. School for Deaf Bheemavaram, West Godavari District

**.....RESPONDENT(S)**

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ order or direction more in the nature of mandamus declaring the orders passed by the first respondent in Roc. No. D4/17061/DEO/98, dated 29-12-2003 in giving promotion to the 2nd respondent in concerned as language Pandit Gr.I (Telugu) as highly arbitrary, illegal and violative of Article 14, 16 and 21 of the constitution and also contrary to the Rules issued in G.O.Ms. No. 538, Education dated 20-11-1998 in spite of the qualification criteria and also contrary to the method of appointment as provide in G.O.Ms. No. 278, education, dt 20-6-1983 and consequentially to declare that the petitioner is entitled for promotion to the post of Language pandit of I in the Place of the Respondent No.2 with all seniority and monetary benefits.

**Counsel for the Petitioner: MR.P.V.RAMANA**

**Counsel for the Respondent No.1: Mr.A.K.Jayaprakash Rao, S.C. for T.T.D.**

**Counsel for the Respondent No.2: --**

**The Court, at the admission stage, made the following :**

**ORAL ORDER:**

The petitioner has filed this writ petition challenging the order passed by the 1<sup>st</sup> respondent in R.O.C.No.D4/17061/DEO/98, dated 29.12.2003 in giving promotion to the 2<sup>nd</sup> respondent as Language Pandit Grade-I (Telugu).

The brief facts that are necessary for the purpose of disposal of the writ petition may be stated as follows:

The writ petitioner and the 2<sup>nd</sup> respondent underwent selection process and in that process, a list of merit candidates was prepared on 22.2.1992. The petitioner was appointed as Secondary Grade Teacher, S.V.School for Deaf, whereas, the 2<sup>nd</sup> respondent was appointed as Telugu Pandit Grade-II in S.V.School for Deaf. According to the petitioner, the qualifications prescribed for Government Teachers in view of various Government Orders issued from time to time are made applicable to the Teachers of the 1<sup>st</sup> respondent also. It is also stated that the 2<sup>nd</sup> respondent is not having requisite qualification as per the rules at the time she was given appointment. According to the writ petitioner, the 2<sup>nd</sup> respondent is lacking with the Bachelor's Degree with optional language concerned and Pandits training or its equivalent qualification. The petitioner claims that he is fully eligible and qualified to hold that post. Though the seniority list is prepared in respect of the secondary Grade Teachers and Language Pandits as per the rules, the 1<sup>st</sup> respondent has not chosen to issue and communicate any

sort of common seniority list of categories 1 to 11 of Clause-III and thereafter, promotions have to be effected from the said categories. As on the date of promotion, there is no preparation of common seniority list of 1 to 11 categories. Hence, this writ petition has been filed.

The 1<sup>st</sup> respondent filed counter affidavit stating that the petitioner has acquired qualification in B.A. Telugu Literature and B.Ed. (Methodology) in Telugu. The basic qualification prescribed for Secondary Grade Assistant in terms of G.O.Ms.No.538 Edn. (Ser.II) Dept., dated 20.11.1998 is not denied. It is stated that the petitioner herein was selected and appointed as Secondary Grade Teacher and he was placed at serial No.8 in the order of merit and fixed in roster at point No.9 earmarked for O.C. though he belongs to BC-B, whereas the 2<sup>nd</sup> respondent herein, was selected and appointed as Telugu Pandit Grade-II vide Memo Roc.No.D4/42842/91, dated 22.2.1992 and was fixed in the roster at point No.1 (O.C) though she belongs to BC-C category. Separate orders have been issued to the petitioner and the 2<sup>nd</sup> respondent as they were selected for different posts. It is not denied that T.T.Ds. adopted and implemented the A.P. Education Sub-ordinate Service Rules issued by the Government from time to time. It is stated that the 2<sup>nd</sup> respondent possessed all the qualifications necessary for the post of Language Pandit Grade-I and she was fully qualified at the time of appointment. The 2<sup>nd</sup> respondent joined on 28.2.1992 in the post of Language Pandit Grade-I, whereas the petitioner joined duty as Secondary Grade Teacher on 3.3.1992. Therefore, the writ petitioner is junior to the 2<sup>nd</sup> respondent. As the 2<sup>nd</sup> respondent is not only senior to the petitioner and she is already working as Telugu Pandit Grade-II, she deserves promotion. It is not disputed that among the categories shown in G.O.Ms. No.538, dated 20.11.1998, the persons belonging to the categories under Clause-III are eligible to promotion to the post of Language Pandit Grade-I. Secondary Grade Assistants are equally eligible to the post of Language Pandit Grade-I. As per rule 33(a) of

the A.P. State and Subordinate Service Rules, 1996, the seniority of a person in service, class or category or grade is determined by the date of the appointment to such service class or category or grade among the categories of posts such as, Secondary Grade Assistants, Language Pandit Grade-I, P.E.T., Drawing Master and Tailoring Instructor. Among the above categories, the individual is working in the category of Language Pandit Grade-I and Secondary Grade Assistants are eligible and qualified for promotion to the posts of Language Pandit Grade-I and there are no qualified candidates in other categories to prepare a common seniority list. However, the petitioner became eligible to the promotion to the post of Telugu Pandit Grade-I only during the year 2002 by acquiring the requisite qualification of B.A. The *bona fide* certificate was checked by the Issuing Authority and confirmed only during the month of March, 2004. As such, the petitioner has no right to speak about the eligibility of other candidates and hence, the writ petition is devoid of merit.

The petitioner filed reply affidavit stating that the 1<sup>st</sup> respondent cleverly did not state or make any statement in respect of the ranking of the 2<sup>nd</sup> respondent. When the 2<sup>nd</sup> respondent made a statement in respect of the ranking of the petitioner, fairness requires the ranking of the 2<sup>nd</sup> respondent to be stated in the counter. It is the bounden duty of the 1<sup>st</sup> respondent to prepare a common seniority list including categories, which are shown in the relevant service rules. Hence, he prays to allow the writ petition.

Heard the learned counsel for the petitioner and the learned standing counsel for the 1<sup>st</sup> respondent and perused the material on record.

The learned counsel for the petitioner has contended that when the writ petitioner claims specifically that he secured the rank above the rank of the 2<sup>nd</sup> respondent, he ought to have been promoted to the post of Language Pandit Grade-I (Telugu) and it is not specifically denied in the counter that his rank in the merit list is less than that of the rank secured by the 2<sup>nd</sup> respondent and therefore, the impugned

proceedings in promoting the 2<sup>nd</sup> respondent as Language Pandit Grade-I (Telugu) is highly arbitrary and illegal.

On the other hand, the learned standing counsel for the 1<sup>st</sup> respondent has contended that as per the roster, the 2<sup>nd</sup> respondent was placed at point No.1 though she belongs to B.C.-C whereas, the writ petitioner was placed as O.C. in roster at Sl.No.8 as he secured rank No.9, and considering the seniority in the merit list and also the date of joining of the 2<sup>nd</sup> respondent, the 2<sup>nd</sup> respondent was given promotion and therefore, the order under challenge does not suffer from any legal infirmities so as to call for interference by this Court.

Though notice is serviced on the 2<sup>nd</sup> respondent, she did not appear before this Court.

The short question that falls for consideration in this writ petition is whether the date of joining of service can be taken as a criteria for determining the seniority or whether the rank placed in the selection committee has to be taken into consideration?

The factual matrix is not in dispute with regard to the promotion to the post of any Grade-I Pandit. The following are the feeder categories:

- a. *Junior Deputy Inspectors of School*
- b. *Secondary Grade Teachers*
- c. *Language Pandits Grade-II(Telugu/Hindi/Urudu)*
- d. *Vyakarana Pandits*
- e. *Shaitya Pandits*
- f. *Yajurveda Pandits*
- g. *Samaveda Pandits*
- h. *Jyotisha Pandits*
- i. *Physical Education Teachers*
- j. *Physical Education Teachers (NFC) and*

k. *Specialist Teachers in various specialists*

The writ petitioner was appointed as Secondary Grade Teacher on 22.2.1992. On the same day, the 2<sup>nd</sup> respondent was also appointed as Telugu Pandit Grade-II in S.V.School for Deaf. Though it is stated in the affidavit that the 2<sup>nd</sup> respondent did not possess requisite qualifications for appointment as Telugu Pandit Grade-II, that cannot be taken note of in view of the fact that her appointment was not challenged.

On the other hand, it is specifically stated by the respondents that the 2<sup>nd</sup> respondent is fully qualified for appointment as Telugu Pandit Grade-II.

The case of the petitioner is that no common seniority list is prepared from all the feeder categories duly taking note of the merit rankings they secured at the time of selection. Whereas, the case of the respondents is that among the categories there are a few members who are eligible for Language Pandits, and there are no other qualified candidates from all the categories to prepare a common seniority list except the individual working in the category of any Language Pandit Grade-II and Secondary Grade Assistant. So, taking the seniority between the writ petitioner and the 2<sup>nd</sup> respondent and considering the date of joining, the 2<sup>nd</sup> respondent was given promotion. This is the sum and substance of the case of the 1<sup>st</sup> respondent.

The learned counsel for the petitioner relied upon a decision reported in ***M.ANAND RAO AND Anr. Vs. GOLCONDA GRAMEEN BANK, HYDERABAD*** wherein it is held as follows:

*“Now the point for consideration is, whether the seniority of the petitioners and the affected respondents is to be reckoned from the actual date of appointment or on the basis of merit which they obtained in the selection process. The respondents have further stated that the seniority list has been compiled in*

*accordance with the Golconda Grameena Bank Staff Service Regulations and Regulation No.13(2) of the said Regulations provides:-*

*“the inter se seniority of the Officers of employees directly recruited in a batch to any grade or scale shall be reckoned with reference to the rank allotted to them at the time of such recruitment.”*

*It is contended that in the selection process the merit of the petitioners was lowest, therefore although they got the job in preference to general category candidates because of the roaster points much before the candidates in the general category, in seniority they cannot rank over and above those candidates who had better merit than the petitioners. The respondents in this connection have relied upon judgment of the Supreme Court in Union of India vs. Virpal Singh Chauhan, 1995 (5) SLR 400. In this case, the Supreme Court was interpreting a rule pertaining to the Railways. The rule was:*

*“subject, to the condition that seniority of the Scheduled Caste/Scheduled Tribe candidates in comparison to other candidates will continue to be governed by the panel position in the case of categories where training is not provided and in accordance with the merit position in the examination where training is provided.”*

*While interpreting this rule, the Supreme Court posed a question, “what did the circular/letter mean when it spoke of seniority being governed by the panel position?” Then, the Court answered it, “In our opinion, it should mean the panel prepared by the selecting authority at the time of selection for Grade ‘C’. It is the seniority in this panel which must be reflected in each of the higher grades. This means that while the rule of reservation gives accelerated promotion, it does not give the accelerated or what may be called, the consequential seniority.”*

For the same proposition, he relied upon another decision reported in **G. KOTESWARA RAO Vs. CHAITANYA GRAMEENA BANK** wherein it is held to the following effect:

*“To appreciate the contentions of the learned Counsel for the parties, it would be useful to read here Rule 13 of the above said Rules:*

*13(1)(a) Seniority of an officer or employee of the Bank in*

*a grade or scale shall be reckoned with reference to the date of his appointment in that grade or scale.*

*(b) Where there are two or more officers of the same length of service in that grade or scale, their inter se seniority shall be reckoned with reference to their seniority in the immediately preceding (sic. Preceding) grade or scale or the previous cadre to which they belong in the Bank's service.*

3. *Where there are two or more officers of the same length of service of such grade or scale or such previous cadre their seniority shall be determined with reference to their seniority in the immediately preceding grade or scale or cadre; as the case may be.*

*Provided that the inter se seniority of the Field Officers or Accountants vis-à-vis the Branch Managers, who were in the service of the Bank on Finance, Department of Economic Affairs, Banking Division Letter No.2-17-79 PRB dated 29<sup>th</sup> April, 1980 are adopted by the Bank, may be so reckoned that all Field Officers or Accountants may rank junior to their existing Branch Managers.*

2. *The inter se seniority of officers or employees directly recruited in a batch to any grade or scale shall be reckoned with reference to the rank allotted to them at the time of such recruitment.*
3. *In the case of an officer or employee whose probation has been extended, his seniority shall be reckoned just below all the officers or employees, if any, recruited or promoted in the same batch along with him."*

*A perusal of sub-rule (1)(a) and sub-rule (2) of Rule 13 makes it abundantly clear that the seniority of an officer or employee of the Bank in any grade or scale has to be reckoned with reference to the date of his appointment in that grade or scale; where number of officers are employed by direct recruitment, their inter se seniority in a batch to any grade or scale will have to be reckoned with reference to the ranks allotted at the time of such recruitment. Admittedly, in this case, the recruitment was made in accordance with the selection list prepared on the basis of merit. Therefore, the preparation of seniority on any basis other than the ranking in the selection list will be contrary to the Rules. In Chairman, Puri Gramya Bank Vs. Ananda Chandra Das, the Honourable Supreme Court held as follows:*

*“The only question in this case is that what shall be the ranking among the direct recruits? Is it the date on which they joined duty or according to the ranking given by the Selection Board? On comparative evaluation of the respective merits of the candidates for direct recruitment, the Board had prepared the merit list on the basis of the ranking secured at the time of the selection. It is settled law that if more than one are selected, the seniority is as per ranking of the direct recruits subject to the adjustment of the candidates selected on applying the rule of reservation and the roster. By mere fortuitous chance of reporting to duty earlier would not alter the ranking given by the Selection Board and the arranged one as per roster. The High Court is, therefore, wholly wrong in its conclusion that the seniority shall be determined on the basis of the joining reports given by the candidates selected for appointment by direct recruitment and length of service on its basis. The view, therefore, is wrong.”*

In the aforementioned decisions, there is a specific rule, which provided that *inter se* seniority of the Officers or employees directly recruited in a batch to any grade or scale shall be reckoned with reference to the rank allotted to them at the time of such recruitment.

Rule 33(b) of The Andhra Pradesh State & Subordinate Services Rules, 1996 reads thus:

*“The appointing authority may, at the time of passing an order appointing two or more persons simultaneously to a service, fix either for the purpose of satisfying the rule of reservation of appointments or for any other reason the order of preference among them; and where such order has been fixed, seniority shall be determined in accordance with it;*

*Provided further that the order of merit or order of preference indicated in a list of selected candidates prepared by the Public Service Commission or other selecting authority, shall not be disturbed inter se with reference to the candidates position in such list or panel while determining the seniority in accordance with this rule and notional dates of commencement of probation to the extent necessary, shall be assigned to the persons concerned, with reference to the order or merit or order of preference assigned to them in the said list.”*

It is not disputed before this Court that the A.P. State & Subordinate

Services Rules, 1996 and the Government orders issued from time to time are adopted by the 1<sup>st</sup> respondent for implementing the *inter alia* promotions. The above rule makes it clear that the seniority has to be reckoned as per the ranking allotted at the time of selection. It is not specifically stated in the counter that the 2<sup>nd</sup> respondent secured higher rank than the rank secured by the writ petitioner. Though the rank of the petitioner has been stated as No.8 in the order of merit, but conveniently, the 1<sup>st</sup> respondent did not state in the counter affidavit as to the rank secured by the 2<sup>nd</sup> respondent in the order of merit. When the seniority has to be taken into consideration for giving promotion, the same has to be followed, and the promotion to the 2<sup>nd</sup> respondent is illegal and not in accordance with the rules governing the service conditions of the writ petitioner and the 2<sup>nd</sup> respondent. The date of joining cannot be taken into consideration for the purpose of determining the *inter se* seniority. Therefore, the promotion of the 2<sup>nd</sup> respondent requires reconsideration. Even the representation given by the 1<sup>st</sup> respondent, dated 18.2.2003 reveals that considering his seniority, he may be given promotion to the Grade-I Pandit.

For the foregoing reasons, I am of the considered view that the impugned order, dated 29.12.2003 suffers from legal infirmities and is liable to be set aside. Accordingly, the impugned order is set aside and the 1<sup>st</sup> respondent is directed to reconsider the matter in giving promotion as Language Pandit Grade-I Telugu, duly taking note of the relative merit list that was prepared at the time of selection. This exercise shall be done within a period of three months from the date of receipt of a copy of this order.

In the result, the writ petition is allowed. In the circumstances of the case, there shall be no order as to costs.

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(K.C. BHANU, J.)

22<sup>nd</sup> December, 2004.

Bcj

To

1 The Executive Officer, The Tirumala Tirupathi Devasthanams, Tirupathi, Chittoor District

2 Two C.D. copies